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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,816	06/14/1999	PHILIPPE MALCORPS	99-260	2849

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BACHMAN & LAPOINTE
900 CHAPEL STREET SUITE 1201
NEW HAVEN, CT 06510-2802

EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/284,816

Applicant(s)

MALCORPS ET AL. *SC*

Examiner

Curtis E. Sherrer, Esq.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/18/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-45 and 47-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-45 and 47-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40, 41, 43-45 and 47-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over New Glarus Brewing Company Apple Ale Beer (label) ("New Glarus") or Cock's Fine Brews (<http://www.notchturner.com/cock/frutopen.htm>) ("Cock") in light of Ashurst (Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages (pages 174-6)) in view of Line *et al.* (U.S. Pat. No. 4,355,110) ("Line") and in further view of applicants' admissions (page 5).

Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the well known mixed drink "Snakebite" in view of Line and in further view of applicants' admissions.

Response to Arguments

Applicants' arguments filed 06/18/04 have been fully considered but they are not persuasive.

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Applicant argues that because the prior art is silent as to the clarity of the beer, they must inherently be clear. First, the claims are not restricted to any haze value, so even a slight haze would meet the claims.

Second, applicants state that filtering is stronger than centrifuging, implying that the prior art would remove all pectin and haze, while applicants' centrifuging step would not. It is not clear on what factual basis applicants have reached this conclusion. If the type and manner in which the centrifuge is operated is critical to the invention, then it must be claimed.

It appears that applicants argue because the references are silent as to the presence of a haze, then it must be absent because they must filter it tightly enough to remove any haze producing elements. To support this argument, they infer that, even though the prior art also does not teach the use of a filter, it must be present. Applicants argue, on the one hand, when a reference is silent as to one aspect of the process, i.e., the haze, it must be absent and then, later when another aspect is absent, i.e., the filtering, it must be present. The arguments are based on assumptions that are not supported by what those of ordinary skill would find obvious in light of the prior art teachings.

Applicants argue that it is not supported that Snakebite would inherently contain the amount of claimed pectin. Page 176, of Ashurst, discloses the amount of pectin typically found in apple juice. As Snakebite is generally half beer and half apple juice, it is seen that the pectin values that would be in Snakebite meets the claim limitation.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Neil McInnes, (<http://www.brewing.co.nz/neil.mcinnnes/199404xmascheerwithbeer.htm>), teaches that "Snakebite" is probably the most commonly known mixed beer drink.

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer'.

Curtis E. Sherrer, Esq.
Primary Examiner
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